

Committee on Resources

Subcommittee on National Parks and Public Lands

Testimony

STATEMENT FOR THE RECORD OF
VICTOR S. PERLMAN,
ON BEHALF OF
AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS
AND NORTH AMERICAN NATURE PHOTOGRAPHY ASSOCIATION,

IN CONNECTION WITH H.R. 154,

A BILL TO PROVIDE FOR THE COLLECTION OF FEES
FOR THE MAKING OF MOTION PICTURES, TELEVISION PRODUCTIONS,
AND SOUND TRACKS IN THE NATIONAL PARK SYSTEM
AND NATIONAL WILDLIFE REFUGE SYSTEM UNITS,
AND FOR OTHER PURPOSES

Before the House Subcommittee on
National Parks and Public Lands

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I. Introduction.

Mr. Chairman, my name is Victor Perlman, and I am the Managing Director and General Counsel of the American Society of Media Photographers. The American Society of Media Photographers, or ASMP as it

is known, was founded in 1944 as the Society of Magazine Photographers. ASMP is the largest organization in this country, or in the world, representing professional photographers who make photographs for publication in the various media. ASMP has approximately 6,000 members, most of whom are freelance photographers, who have been producing some of this country's best photography for publishers, advertising agencies and corporate clients for more than half a century. We estimate that there are over 100,000 freelance photographers with interests similar to those of our members in this country. I am submitting this statement on behalf of ASMP in support of the approach taken in the current draft of H.R. 154 concerning the granting of permits and charging of fees for making photographs on National Park System lands and requesting that its coverage be expanded to include other public lands without regard to which agency is charged with their management.

I am also submitting this statement on behalf of the North American Nature Photography Association. The North American Nature Photography Association, or NANPA, is a national association of approximately 2,000 members who are photographers (both professional and amateur), photo agents, editors, publishers, educators, biologists, students, manufacturers, and government workers, all of whom are drawn together by a common love of nature photography and the environment. NANPA's goals include promoting nature photography as an art form and as a medium of communication for the sciences, nature appreciation and environmental protection.

We support the goals of this bill, and our fundamental desire is for fairness in their terms and administration. We believe that activities and people who place unusual or substantial burdens or demands on our natural resources or on our government employees should pay for them in proportion to the burdens and demands that they impose. Similarly, we believe that people who do no more than what tourists typically do should be subject to no more restrictions or costs than tourists. This is the approach taken in H.R. 154, and we hope that this will continue unchanged as the Bill passes through the legislative process.

In order to understand our concerns about possible changes in this Bill, you must first know a few facts about the nature and finances of freelance photography in the publication field. Freelance photographers are self-employed. As such, they are not accorded employment benefits. They are not paid a regular salary, do not receive a paid vacation, and must purchase their own cameras and equipment. They are responsible for all of the overhead expenses associated with running a business, must pay for their own health, liability and disability insurance, and are not eligible for unemployment compensation. These hidden cost factors make the freelance photographer's financial investment in every photograph that he or she makes far higher than would appear at first glance.

There are two primary ways in which a photograph intended for publication comes to be made by a freelance photographer: either as part of an assignment from a client or as part of what is known in the trade as "stock." Stock photographs become part of a library or inventory of images that the photographer makes available for licensing to buyers who want to use those images for limited times and purposes. At the time a stock photograph is made, there is neither any client to pay the costs nor any certainty of there ever being one to whom a sale may be made. The majority of professional photographs that are available for publication are held in such stock libraries.

While the language of H.R. 154 treats still photography the same as motion pictures, television productions and similar projects, the practical effect of that language will be that most still photography will, quite correctly, be treated differently from the other categories covered by the Bill. It is absolutely critical that, no matter what changes may be made in H.R. 154, the majority of still photography must continue to be permitted on public lands without the need for permits and fees, which is the practical result under the

current draft. Most motion picture and similar audio-visual productions require, at the least, multiple person crews, special and substantial equipment, and the disruption of normal operations in at least part of the location. Unlike motion pictures and audio-visual video productions, most outdoor still photographs are made by single, individual photographers working without crews, assistants, special effects or unusual equipment. What they do is essentially what tourists do, what you and I do, Mr. Chairman, when we are on vacation recording this country's natural wonders on film for future enjoyment. H.R. 154 wisely recognizes that as such, they should be treated the same as tourists, as long as they are placing only the same demands on our natural resources and civil servants as tourists and are not exploiting them to any greater extent than tourists.

II. Basing the requirement of permits and fees on the basis of advertising, the use of models or props, possible damage to the environment, and disruption of normal uses is the best and fairest approach.

Mr. Chairman, the clear need of the land, the people and the government is for this bill to cover the burdens imposed by major productions that inflict substantial and/or unusual burdens on both our lands and our government officials, and situations where advertisers are deriving a clear commercial benefit from the use of our natural and human resources. That is precisely what the fees and permits required under the current version of H.R. 154 do. Those fees and permits are not appropriate, or needed, to tax and impede the average citizen in visiting our natural wonders and bringing home a photographic record of that visit. Wisely, H.R. 154 does not require fees or permits of average citizens, even when they are average citizens who happen to make their livings as freelance photographers.

Our concern is not with what this Bill currently provides, but with possible future changes that could take place as the Bill goes through the legislative process. Perhaps out of an overabundance of caution, it might be helpful for the Subcommittee to know more about the possible impact on still photographers that would take place if routine photography on public lands were to be subjected to a requirement of fees and permits. I have already described generally how the stock photography business operates. Now let me give you some statistics to help put some flesh on that skeleton. I mentioned earlier that freelance photographers must buy their own equipment. For a professional photographer, it is routine to have to spend thousands of dollars for a single lens. Even for a location photographer, who does not have the overhead of equipping, stocking and running a studio, the cost of equipment is typically in the range of \$70,000. and often more. A photographer who does both location and studio work has an investment in property, plant and equipment of many multiples of that figure.

We all know what has happened to the costs of film and processing in recent years. At my local, snapshot quality, one-hour lab, it costs over \$22., plus tax, to buy and process a single roll of Kodak 400 speed, 36 exposure print film. You can multiply our personal experiences to add at least 25% to reflect the fact that professional quality film and processing costs are substantially higher per photograph than what you and I pay, Mr. Chairman. Now, we can safely assume that a pro will shoot many hundreds of photographs during a good day's shoot. On these numbers, a dozen rolls will cost approximately \$330., plus tax, and produce 432 photographs. Of those photographs, however, like fish eggs, only a small number will ever survive. Industry reports tell us that an average of 2% of the photographs made by professional photographers get through the editing process and make their way into stock libraries.

Of those images that are put in stock libraries, industry reports also tell us that only 2% will ever produce any revenues during the life of the photograph.

For that 2% of 2% that actually sell, our information is that the average price of a stock sale is

approximately \$220. Of that amount, the agencies selling the stock images take commissions that now exceed 50% on average and a number of the best known stock agencies are now starting to charge commissions of 70%, plus expenses.

Thus, for each of the few images that sell, photographers receive an average of \$100. or less, from which they have to pay all of their direct and indirect costs of production. Mr. Chairman, many of us remember the 1966 Antonioni movie, *Blow Up* and recall David Hemmings pulling his Nikon out of the glove compartment of his Rolls Royce. For many of us, that was and is our image of professional photographers. Unfortunately for professional photographers, the facts are that the Rolls Royce is every bit as unrealistic as is a pro's storing his camera in a car's glove compartment. Most freelance photographers would probably make more money doing almost anything else, but they continue to make photographs, despite the economics, because they love what they do. However, if you consider the finances described above, you will see that imposing fees on photographers for access to national lands will turn what is already a marginal economic proposition into a losing one. While professional photographers may be willing to work for relatively little money, nobody can stay in a business in which he or she loses money. Again, our concerns lie not with the Bill as written, but with changes that might be suggested during the legislative process.

III. Aside from financial considerations, the requirement of a permit would prevent the vast majority of outdoor photographs from being made.

Again, the current version of H.R. 154 is to be applauded, and our concern is over the possibility of its being changed in any way that would require fees and permits for routine still photography. Even if no fees were imposed on still photographers, the simple need for permits for routine photography would eliminate most of those beautiful photographs of our natural vistas, and the animals that inhabit them, that we all want and have come to expect to see. Have you ever wondered why most amateur photographs almost never come close to rivaling professional photographs of the same scene? In addition to the skill and knowledge of the photographer, there is a crucial element in all photographs: light. Photography means, literally, "writing with light." To have a great outdoor photograph, you must have great light. Great light for photography is not the same as great light for anything else. The best light for photography is found at the ends of the day: a couple of hours before and after sunrise, and a couple of hours before and after sunset; and if you want a photograph of the incredible animals that live in our national parks, you have to photograph them when they are awake, outside their living quarters, and active. That is almost never during the mid-day. Great nature photographs are rarely if ever made during normal business hours.

Now, if you have to get a permit in order to photograph on national lands, that means that you have to be at an office, perhaps 50 miles away from where you want to photograph, no earlier than 8:30 in the morning when the office opens. By the time you get your permit, drive to your location, and are ready to start photographing, the light is gone, and you might as well pack up for the day. The mere requirement of permits for still photographers would mean that many of the photographs that beautify the offices of many members of the House could not have been made if the photographer had been required to obtain a permit.

IV. H.R. 154 could be even more beneficial if it applied to all national lands, whether under the management of the National Park Service, the Bureau of Land Management, the National Forest Service or otherwise.

The approach of H.R. 154 is essentially the policy that was adopted by the National Park Service after many years of discussion between representatives of the Service and ASMP. Unfortunately, the other agencies managing public lands have a patchwork of varied policies, making it extremely difficult for photographers

to know the permit requirements for photographing on each piece of public land. The answers will be different, and in some cases extremely unfair, depending on which specific agency is responsible for which particular parcel of land. Since most photographers and most civil servants working on public lands are not lawyers or judges, knowing and correctly interpreting the myriad of different regulations is somewhere between difficult and impossible. Uniformity of a photographic permit policy among the different government agencies managing public lands would make life for both civil servants and photographers far easier and more predictable. For example, perhaps some uniformity would correct the current situation where, on lands administered by the Bureau of Land Management in Utah, it costs more to make still photographs for a day than it costs to graze a herd of livestock on the same piece of land. Mr. Chairman, there is a great need for uniformity of regulation among the various government agencies involved in protecting and conserving our natural resources and among the lands and other resources that they manage and control, and the expansion of the coverage of H.R. 154 would be helpful beyond description.

V. Conclusion.

Mr. Chairman, on behalf of ASMP and NANPA, and on behalf of all the freelance photographers who make photographs on our national lands, I thank you and Representative Hefley for having the wisdom to use the approach currently embodied in H.R. 154, I urge you to do whatever you can to maintain that approach as the Bill progresses through Congress, and I respectfully request that the Bill be made even more beneficial by expanding its scope to cover all national lands, irrespective of the agency holding jurisdiction over them. I thank you and the Honorable members of the Subcommittee for their time and kind consideration.

Respectfully submitted,

Victor S. Perlman

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